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Atty. Dkt. No. (Old) 046585-0138
Atty. Dkt. No. (New) 037677-0256

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jed FAHEY *et al.*

Title: CANCER CHEMOPROTECTIVE FOOD PRODUCTS

Appl. No.: 09/825,989

Filing Date: 4/5/2001

Examiner: FF Krass

Art Unit: 1614

Letter Requesting Reconsideration of Decision to Deny Entry of Amendment

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request that the Office reconsider its decision to deny entry of the previously filed amendment. Applicant acknowledges receipt of a Notice of Allowance in the above-captioned application, as well as the refusal to enter the previously filed Amendment under 37 CFR § 1.312. Applicants have paid the issue fee and request reconsideration of the decision. This letter does not attempt to further amend the claims as requested in the earlier amendment. Consequently, we will not repeat the requested amendments in order to clarify that this request should not be viewed as a 312 amendment after payment of the issue fee.

Applicants thank Examiner Krass for the courtesy of a telephone discussion on October 24, 2007, regarding this file. Applicants apologize for any confusion in directing the Examiner to the appropriate portions of the Specification and appreciate the further consideration of these amendments.

As explained in the Examiner's Reason for Allowance, the prior art teaches away from the currently claimed methods of incorporating glucosinolates or isothiocyanates into

food products and teaches removing both ingredients before preparing food products. Applicants have amended the extraction and food production methods claims to provide for the extraction or use of either glucosinolates or isothiocyanates in the claimed methods. This understanding is provided on page 22, last full paragraph, lines 18-28, of the Specification. Consequently, Applicants do not believe entry of the amendments would constitute new matter and entry of the amendment is requested.

This application belongs to a patent family with the following US patents: US 5968505, US 5968567, US 6177122, and US 6242018. Previous claims have been granted to products or methods containing glucosinolates or isothiocyanates. For example, US 6177122 contains the following claims:

12. A food product comprising a source of glucosinolates or isothiocyanates, wherein said glucosinolate or isothiocyanate source is a cruciferous seed or cruciferous sprout, or extract of said seed or sprout, and wherein said sprout is (A) harvested between the onset of germination up to and including the 2-leaf stage, and (B) not a Brassica oleracea variety capitata, Lepidium sativum, Sinapis alba, Sinapis nigra, or Raphanus sativus sprout.

28. A food product according to claim 12, wherein said source of glucosinolates or isothiocyanates is a cruciferous sprout.

30. A food product according to claim 29, wherein said food product is selected from the group consisting of salads, sandwiches and drinks or shakes.

31. A food product according to claim 28, wherein said sprout has been subject to lyophilization, drying, extraction, freezing, baking, cooking, or boiling prior to incorporation into said food product.

32. A food product according to claim 31, wherein said food product is selected from the group consisting of baked goods, teas, soups, cereals, pills, tablets, drinks, and shakes.

33. A food product according to claim 12, wherein said source of glucosinolates or isothiocyanates is crucifer seed or cruciferous sprout extract.

Other patents contain methods directed to glucosinolates without requiring isothiocyanates. US 6242018 contains independent claims 1 and 7 directed to “A method of preparing a food product rich in glucosinolates...”

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Applicants hope the above clarifies the nature of the earlier filing and request entry of the earlier filed amendment.

Claims 48-51, 53-63 and 65-75 remain pending in this application. It is believed that no fees are due in connection with this letter. In the event this is not correct, the undersigned authorizes the Commissioner to charge Deposit Account No. 19-0741.

Respectfully submitted,

Date 10/25/07

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